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3765
P-3906-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: DONALD C. JOHNSON
JEFFREY SPILFOGEL

FOR: A SEAMLESS BRASSIERE SHOULDER STRAP

SERIAL NO.: 09/780,320

FILED: February 12, 2001

EXAMINER: John Calvert, Supervisory Patent Examiner, Technology Center 3700

H/13
H.
5-22-2

REPLY TO EXAMINER'S ANSWER

Hon. Commissioner of Patents
and Trademarks
Washington, DC 20231

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Sir:

In paragraph (10) GROUNDS OF REJECTION, the rejection set forth therein is said to be "set forth in prior Office Action, Paper No. 4" (i.e., presumably the Final Rejection of 08/06/01). Applicant finds such not to be the case. Applicant finds just the reverse to be the case.

In reply to the Office Action of 05/25/01, applicant made extensive changes in the claim in issue, such changes involving the dimension of the strip as a work-in-process vis-à-vis the dimension in the finished strap, enabling applicant in said Reply to the Office Action of 05/25/01 made on June 11, 2001 to state:

"It is earnestly believed that claim 1, as amended, now recites the metes and bounds of the patent protection desired. While the claim has reference to method steps in forming the strap, i.e., positioning by superposing, fusing and cutting, reference to conditions in the unfinished strap, i.e., work-in-process raw cut edges, and reference to conditions in the finished

strap, i.e., raw cut edges removed by cutting, these reference are not prohibited. In this regard, it is instructive in making of record that as provided in MPEP 2173.01 CLAIM TERMINOLOGY:

A fundamental principal contained in 35 U.S.C. 112, second paragraph is that applicant's are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as the terms are not used in ways that are contrary to accepted meanings in the art. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought."

In reply to the above, the examiner stated "Applicant's amendment is found to overcome the claim objection set forth in the last office action" (underlining added) (at paper No. 4, page 3, paragraph 1)

Thus, not only was the rejection not set forth in prior Office Action, Paper No. 4, but substantively the basis for the rejection was either waived or withdrawn for purposes of this appeal, and the claim recitations in question which define the dimension of the strip as a work-in-process and by comparison define the dimension thereof in the construction of the finished article should be accorded patentable significance in the decisional process whether there is a proper rejection under 35 U.S.C. 102(b)

Respectfully,

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Dated: April 18, 2002



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